

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE  
SECURITIES DIVISION

FILED  
MAY 11 1998

IN THE MATTER OF:

ORDER NO. 98-0145 AO

RULE AMENDING 710 IAC 1-13-6 CONCERNING  
FILING REQUIREMENTS UNDER THE INDIANA  
UNIFORM LIMITED OFFERING EXEMPTION

ORDER ADOPTING RULE AMENDING 710 IAC 1-13-6

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Comes now Bradley W. Skolnik, Indiana Securities Commissioner, and pursuant to the authority granted under IC 23-2-1-15, finds as follows:

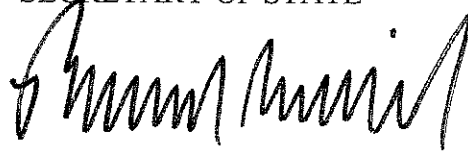
1. The Indiana Securities Division caused to be published in the April 1, 1998 edition of the Indiana Register (21 Ind. Reg. 2592 [1998]), a proposed rule amending 710 IAC 1-13-6 concerning filing requirements under the Indiana Uniform Limited Offering Exemption.
2. The Indiana Securities Division caused to be published on April 1, 1998, a notice in a newspaper of general circulation in Marion County, to wit: The Star and News, describing the proposed rule and disclosing the date, time and location of a public hearing regarding the rule.
3. A public hearing in regard to the proposed rule was held on April 28, 1998 at 10:00 a.m. at the Office of the Secretary of State, Securities Division, 302 West Washington Street, Room E111, Indianapolis, Indiana.
4. The Securities Commissioner hereby finds that the proposed rule (710 IAC 1-13-6) should be adopted in the same form as that provided in LSA Document No. 97-267 published in the April 1, 1998 edition of the Indiana Register (21 Ind. Reg. 2592 [1998]).

IT IS THEREFORE ORDERED that the rule amending 710 IAC 1-13-6 concerning filing requirements under the Indiana Uniform Limited Offering Exemption is ADOPTED.

IT IS FURTHER ORDERED AND DIRECTED that the rule amending 710 IAC 1-13-6 concerning filing requirements under the Indiana Uniform Limited Offering Exemption attached hereto be submitted to the Attorney General and the Governor of Indiana for their approval as required under IC 4-22-2.

ORDERED at Indianapolis, Indiana this 11<sup>th</sup> day of May, 1998

SUE ANNE GILROY  
SECRETARY OF STATE



BRADLEY W. SKOLNIK  
INDIANA SECURITIES COMMISSIONER



TITLE 710 SECURITIES DIVISION

FINAL RULE  
LSA DOCUMENT #97-267 (F)

DIGEST

Amends 710 IAC 1-13-6 concerning filing requirements under the Indiana uniform limited offering exemption. Effective 30 days after filing with the secretary of state.

**710 IAC 1-13-6**

SECTION 1. IAC 1-13-6 IS AMENDED TO READ AS FOLLOWS:

**710 IAC 1-13-6 Indiana uniform limited offering exemption**

**Authority: IC 23-2-1-2**

**Affected: IC 23-2-1**

Sec. 6. (a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of IC 23-2-1-12.

(b) In view of the objective of this section and the purposes and policies underlying IC 23-2-1, the exemption created by this section is not available to any issuer with respect to any transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.

(c) Nothing in this section is intended to relieve broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such persons.

(d) By authority delegated the Indiana securities commissioner by IC 23-2-1-2(b)(16) to create a rule, the following transaction is determined to be exempt from the registration provisions of IC 23-2-1-3: Any offer or sale of securities offered or sold in compliance with 17 CFR 230.504, 17 CFR 230.505 or 17 CFR 230.506 including any offer or sale made exempt by application of 17 CFR 230.508(a), as made effective in SEC Release No. 33-6389, 47 Fed. Reg. 11,251 (1982), and as amended in SEC Release Nos. 33-6437, 47 Fed. Reg. 54,764 (1982), 33-6663, 51 Fed. Reg. 36,385 (1986), 33-6758, 53 Fed. Reg. 7,866 (1988), and 33-6825, 54 Fed. Reg. 11,369 (1989), and which satisfies the following further conditions and limitations:

(1) The following, in the case of an offering made in compliance with 17 CFR 230.504 or 17 CFR 230.505, but not 17 CFR 230.506:

(A) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this state unless such broker-dealer is appropriately registered under IC 23-2-1-9. It is a defense to a violation of this subsection if the issuer sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not properly registered.

~~(2)~~(B) The disqualifications found at section 3 of this rule shall apply to this section **subdivision** as well IC 23-2-1-2(b)(10).

~~(3)~~(C) The issuer shall file with the securities commissioner a notice on Form D (17 CFR 239.500) (incorporated herein by reference):

~~(A)~~(i) No later than ten (10) **full business** days prior to the receipt of consideration or the delivery of a subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption.

~~(B)~~(ii) The notice shall be accompanied by the information furnished by the issuer to offerees. This filing requirement is not intended to provide the basis for a fairness type of review of the offering.

~~(C)~~(iii) Unless otherwise available, included with or in the initial notice shall be a consent to service of process.

~~(4)~~(D) In all sales to nonaccredited investors in this state, one (1) of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one (1) of the following conditions is satisfied:

~~(A)~~(i) The investment is suitable for the purchaser upon the basis of facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For ~~purpose~~ **purposes** of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable.

~~(B)~~(ii) The purchaser, either alone or with his or her purchaser representative or representatives, has such knowledge and experience in financial and business ~~matter~~ **matters** that he or she is capable of

evaluating the merits and risks of the prospective investment.

~~(e)~~(E) A failure to comply with a term, condition, or requirement of ~~subsections (d)(1), (d)(3),~~ **clauses (A), (C), and (d)(4) (D)** will not result in loss of the exemption from the requirements of IC 23-2-1-3 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

~~(1)~~(i) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

~~(2)~~(ii) the failure to comply was insignificant with respect to the offering as a whole; and

~~(3)~~(iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of ~~subsections (d)(1), (d)(3),~~ **clauses (A), (C), and (d)(4) (D)**.

**(F) The securities commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.**

**(2) In the case of an offering made in compliance with 17 CFR 230.506, the issuer shall file with the securities commissioner a notice on Form D no later than fifteen (15) days after the first sale in Indiana.**

~~(f)~~(e) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of IC 23-2-1; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

~~(g) The securities commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.~~

~~(h)~~(f) The exemption authorized by this section shall be known and may be cited as the Indiana uniform limited offering exemption or IULOE. *(Securities Division; 710 IAC 1-13-6; filed Feb 20, 1996, 2:35 p.m.; 19 IR3082; errata 21 IR 2393)*